Supreme Court of the United States.

No 59.—October Term, 1906.

Charles K. Offield, Plaintiff in Error, vs. The New York, New Haven and Hartford Railroad Company. } In error to the Supreme Court of Errors of the State of Connecticut.

[December 3, 1906.]

Mr. Justice McKenna delivered the opinion of the Court.

This writ of error brings up for review a judgment of the Supreme Court of Errors of the State of Connecticut, rendered in a proceeding under the statutes of that State for the condemnation of two shares of stock owned by plaintiff in error in the New Haven and Derby Railroad Company.

There was a demurrer to the application, which was overruled by the advice of the Supreme Court of Errors, the judgment on demurrer having been reserved, under the practice of the State, for the advice and consideration of that court. (77 Conn. 417.) Upon the hearing judgment was rendered for defendant in error, which was affirmed by the Supreme Court of Errors. (78 Conn. 1.)

Defendant in error is the lessee of the New Haven and Derby Railroad Company, and has acquired all of the shares of stock of the latter road except the two shares owned by plaintiff in error.

That the lease and acquisition of stock are valid under the laws of the State is decided by the Supreme Court of Errors, and it is sought by proceedings under review to obtain the two shares of stock owned by plaintiff in error, under sections 3694 and 3695 of the Public Laws of Connecticut, which are as follows:

"Sec. 3694. In case any railroad company, acting under the authority of the laws of this State, shall have acquired more than three-fourths of the capital stock of any steamboat, ferry, bridge, wharf, or railroad corporation, and cannot agree with the holders of outstanding stock for the purchase of the same, such railroad company may, upon a finding by a judge of the Superior Court that such purchase will be for the public interest, cause such outstanding stock to be appraised in accordance with the provisions of section 3687. When the amount of such appraisal shall have been paid or deposited as provided in said section, the stockholder or stockholders whose stock shall have been so appraised shall cease to have any interest therein, and on demand shall surrender all certificates for such stock, with duly executed powers of attorney for transfer thereon, to the corporation applying for such appraisal.

"SEC. 3695. If any person holding a minority of the shares of stock in any corporation referred to in section 3694 cannot agree with the railroad company owning three-fourths of such stock for the purchase of his shares he may cause the same to be appraised in accordance with the provisions of section 3687. When such appraisal has been made and recorded in the office of the clerk of the Superior Court of any county where such railroad company operates a railroad, and the certificates for such stock, with duly executed powers of attorney for transfer thereon, have been deposited with such clerk for such railroad company, such appraisal shall have the effect of a judgment against such company and in favor of the holder of such stock, and at the end of sixty days, unless such judgment is paid, execution may be issued."

The purpose of the acquisition of the stock is to enable defendant in error to improve the New Haven and Derby Railroad.

It is contended by plaintiff in error (1) that the purpose for which the stock is sought to be obtained is not a public use. (2) That defendant in error has the power and authority to make the improvements mentioned in its application, which would be as advantageous as taking the stock. (3) The proceedings and statutes are in violation of the due process clause of the Fourteenth Amendment to the Constitution of the United States, and impair the contract rights of plaintiff in error as stockholder of the New Haven and Derby Railroad Company, and his rights in, under and by virtue of the lease to defendant in error.

These contentions raise a Federal question and we can not say that it is frivolous. The motion to dismiss is therefore denied.

(1.) The power of the State to declare uses of property to be public has lately been decided in *Clark* v. *Nash*, (198 U. S. 361,) and in the case of *Strickley* v. *Highland Boy Mining Company*, (200 U. S. 527.) These cases exhibit more striking examples of the power of a State than the case at bar. In the first case the statute of the State permitted an individual to enlarge the ditch of another to obtain water for his own land; in the second case the statute authorized the condemnation of a right of way to transport ore from a mine to a railroad station. In the first case it was said that the public policy of the State declaring the character of use of property depends upon the facts surrounding the subject. In the second case it was said, commenting on the first, "it provided that there might be exceptional times and places in which the very foundations of public welfare can not be laid without requiring concessions from individuals to each other upon due compensation, which under other conditions would be left wholly to voluntary consent." The case at bar does not need the support of such broad principles. The ultimate purpose of defendant in error in the case at bar is the improvement of the New Haven and Derby Railroad, which "connects [we quote from the opinion of the Supreme Court of Errors,] at New Haven, on the east with four and at its western terminals with two, im-

portant railroad lines owned by plaintiff (defendant in error,) and forms a link in an all-rail route between Boston and the West, which is the only one controlled by it over which goods can be transported with assured dispatch in all weathers and seasons." In this purpose the public has an interest and to accomplish it the court applied the statute. The court observed: "To develop this route so as best to serve the public interest requires the a ying of additional tracks on the New Haven and Derby Railroad and other extensive and very costly improvements. The lessor company has neither means nor credit whereby this can be effected on advantageous terms. The plaintiff could and will effect it, and at much less cost, if it can acquire the two outstanding shares of stock of the lessee. They are owned by the defendant, who refuses to agree on the terms of purchase."

(2) The contract which it is contended was impaired is the lease of the New Haven and Derby Railroad by defendant in error. The lease is for a period of ninety-nine years from July 1, 1892, at a rental of four per cent per annum upon the capital stock, together with the payment of taxes, assessments and interest upon the funded debt. Associated with this contention there is another more general, to the effect that the statute impairs the contract rights of plaintiff in error as a stockholder of the New Haven and Derby Railroad Company. We do not find it necessary to give precise and separate discussion to these contentions. They seem to us to be but parts or incidents of the contention that the stock is sought for a private use. If they are not incidents of that they are answered and opposed by the case of *Long Island Supply Company* v. *Brooklyn*, (166 U. S. 685.) Whatever value the lease gives the shares of stock will be represented in their appraisement.

Judgment affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.